



RULE-MAKING ORDER

CR-103P (May 2009)
(Implements RCW 34.05.360)

Agency: Office of the Insurance Commissioner

Permanent Rule Only

Effective date of rule:

Permanent Rules

X 31 days after filing.

☐ Other (specify) _____ (If less than 31 days after filing, a specific finding under RCW 34.05.380(3) is required and should be stated below)

Any other findings required by other provisions of law as precondition to adoption or effectiveness of rule?

☐ Yes

☒ No

If Yes, explain:

Purpose: The purpose of these new rules is to clarify the requirements for confirming that an annuity product is suitable for the customer.

Insurance Commissioner Matter No. R 2011-23

Citation of existing rules affected by this order:

Repealed:

Amended:

Suspended:

Statutory authority for adoption: RCW 48.02.060 and 48.23.015(8)

Other authority :

PERMANENT RULE (Including Expedited Rule Making)

Adopted under notice filed as WSR 12-03-117 on January 18, 2012.

Describe any changes other than editing from proposed to adopted version:

WAC 284-17-265 (2)(b) "insurance" was added.

WAC 284-17-265(5) was rewritten to mirror the NAIC Model language in response to comments.

WAC 284-17-265 (5)(a)(i) and (ii) were deleted.

If a preliminary cost-benefit analysis was prepared under RCW 34.05.328, a final cost-benefit analysis is available by contacting:

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Date adopted:

February 28, 2012

NAME (TYPE OR PRINT)

Mike Kreidler

SIGNATURE

TITLE

Insurance Commissioner

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: February 28, 2012

TIME: 2:07 PM

WSR 12-06-019

(COMPLETE REVERSE SIDE)

**Note: If any category is left blank, it will be calculated as zero.
No descriptive text.**

**Count by whole WAC sections only, from the WAC number through the history note.
A section may be counted in more than one category.**

The number of sections adopted in order to comply with:

Federal statute:	New	_____	Amended	_____	Repealed	_____
Federal rules or standards:	New	_____	Amended	_____	Repealed	_____
Recently enacted state statutes:	New	_____	Amended	_____	Repealed	_____

The number of sections adopted at the request of a nongovernmental entity:

New	_____	Amended	_____	Repealed	_____
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The number of sections adopted in the agency's own initiative:

New	<u>2</u>	Amended	_____	Repealed	_____
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The number of sections adopted in order to clarify, streamline, or reform agency procedures:

New	_____	Amended	_____	Repealed	_____
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The number of sections adopted using:

Negotiated rule making:	New	_____	Amended	_____	Repealed	_____
Pilot rule making:	New	_____	Amended	_____	Repealed	_____
Other alternative rule making:	New	<u>2</u>	Amended	_____	Repealed	_____

NEW SECTION

WAC 284-17-265 Sales of annuities--Insurance producer training. (1) A person may not sell, solicit, or negotiate the sale of an annuity product unless he or she is appropriately licensed as an insurance producer and has successfully completed the annuity suitability training that meets the requirements of this section.

(2)(a) After March 29, 2012, prior to selling, soliciting, or negotiating the sale of annuity products, all insurance producers must complete a one-time, four-hour training course approved by the commissioner and provided by an insurance education provider approved in this state.

(b) Insurance producers who hold a life insurance line of authority on March 29, 2012, and who desire to sell annuities must complete the requirements of this section by September 29, 2012.

(c) Persons who obtain a life insurance line of authority on or after March 29, 2012, may not sell, solicit, or negotiate the sale of an annuity product until the annuity training course has been completed.

(3)(a) The annuity suitability training required under this section shall include information on the following topics:

(i) The types of annuities and various classifications of annuities;

(ii) Identification of the parties to an annuity;

(iii) How fixed, variable, and indexed annuity contract provisions affect consumers;

(iv) The application of income taxation of qualified and nonqualified annuities;

(v) The primary uses of annuities; and

(vi) Appropriate sales practices, replacement, and disclosure requirements.

(b) The training required in this section must be sufficient to qualify for at least four continuing education credits.

(c) The training required in this section may be completed by either classroom instruction or self-study in accordance with WAC 284-17-220 through 284-17-256.

(d) The insurance producer education required by this section must not include training that is issuer or company product specific or includes any sales or marketing information and materials.

(e) Approved providers offering the annuity education required by this section must administer the course, issue certificates of completion, report completed training to the commissioner, and maintain records as required by WAC 284-17-270 through 284-17-310.

(4)(a) Resident insurance producers that complete the required training of this section and which are approved in this state may

count those credits toward fulfillment of their Washington CE requirement.

(b) A resident or nonresident producer completing the required training of this section in another state which has adopted the annuity suitability requirement shall be deemed as satisfying this state's requirement as required by WAC 284-17-224.

(c) If a resident insurance producer wishes to apply course credits for the required annuity suitability training offered in another state and the course is not otherwise approved for continuing education credit in this state, the training may qualify for individual course credit subject to WAC 284-17-244.

(5) Each insurer must verify that an insurance producer has completed the annuity training course required in this section before allowing the producer to sell an annuity product for that insurer. An insurer may satisfy its responsibility under this section by obtaining certificates of completion of the training course or obtaining reports provided by commissioner-sponsored data base systems or vendors or from a reasonably reliable commercial data base vendor that has a reporting arrangement with approved insurance education providers.

(6) Insurance producers who have completed the annuity suitability training requirements of this section in a state other than Washington which has adopted the annuity suitability requirement prior to March 29, 2012, are deemed to have satisfied the training requirements of this section.

SUITABILITY IN ANNUITY TRANSACTIONS

NEW SECTION

WAC 284-23-390 Duties of insurers and insurance producers.

(1) For purposes of this section, "suitability information" means information that is reasonably appropriate to determine the suitability of a recommendation, including the following:

- (a) Age;
- (b) Annual income;
- (c) Financial situation and needs, including the financial resources used for the funding of the annuity;
- (d) Financial experience;
- (e) Financial objectives;
- (f) Intended use of the annuity;
- (g) Financial time horizon;
- (h) Existing assets, including investment and life insurance holdings;
- (i) Liquidity needs;
- (j) Liquid net worth;
- (k) Risk tolerance; and
- (l) Tax status.

(2) In addition to the requirements in RCW 48.23.015, insurers and insurance producers must have reasonable grounds to believe the following requirements in recommending and executing a purchase or exchange of an annuity:

(a) The consumer has been reasonably informed of various features of the annuity, such as the potential surrender period and surrender charge, potential tax penalty if the consumer sells, exchanges, surrenders or annuitizes the annuity, mortality and expense fees, investment advisory fees, potential charges for and features of riders, limitations on interest returns, insurance and investment components, and market risk;

(b) The consumer would benefit from certain features of the annuity, such as tax deferred growth, annuitization, or death or living benefit;

(c) The particular annuity as a whole, the underlying subaccounts to which funds are allocated at the time of purchase or exchange of the annuity, and riders and similar product enhancements, if any, are suitable (and in the case of an exchange or replacement, the transaction as a whole is suitable) for the particular consumer based on his or her suitability information; and

(d) In the case of an exchange or replacement of an annuity, the exchange or replacement is suitable including taking into consideration whether:

(i) The consumer will incur a surrender charge, be subject to the commencement of a new surrender period, lose existing benefits (such as death, living or other contractual benefits), or be subject to increased fees, investment advisory fees or charges for riders, and similar product enhancements;

(ii) The consumer would benefit from product enhancements and improvements; and

(iii) The consumer has had another annuity exchange or replacement and, in particular, an exchange or replacement within the preceding thirty-six months.

(3) Prior to the execution of a purchase, exchange or replacement of an annuity resulting from a recommendation, an insurance producer, or an insurer where no producer is involved, shall make reasonable efforts to obtain the consumer's suitability information.

(4) An insurer shall not issue an annuity recommended to a consumer unless there is a reasonable basis to believe the annuity is suitable based on the consumer's suitability information.

(5) An insurer's issuance of an annuity subject to subsection (2) of this section must be reasonable under all the circumstances actually known to the insurer at the time the annuity is issued.

(6) An insurance producer or, where no insurance producer is involved, the responsible insurer representative must at the time of sale:

(a) Make a record of any recommendation subject to this section;

(b) Obtain a customer signed statement documenting a customer's refusal to provide suitability information, if any; and

(c) Obtain a customer signed statement acknowledging that an annuity transaction is not recommended if a customer decides to enter into an annuity transaction that is not based on the insurance producer's or insurer's recommendation.

(7) In addition to the requirements in RCW 48.23.015(4) an insurer must:

(a) Maintain reasonable procedures to inform its insurance producers of the requirements of this regulation and shall incorporate the requirements of this regulation into relevant insurance producer training manuals;

(b) Establish standards for insurance producer product training and must maintain reasonable procedures to require its insurance producers to comply with the requirements of WAC 284-17-265;

(c) Provide product-specific training and training materials which explain all material features of its annuity products to its insurance producers;

(d) Maintain procedures for review of each recommendation prior to issuance of an annuity that are designed to ensure that there is a reasonable basis to determine that a recommendation is suitable. Such review procedures may apply a screening system for the purpose of identifying selected transactions for additional

review and may be accomplished electronically or through other means including, but not limited to, physical review. Such an electronic or other system may be designed to require additional review only of those transactions identified for additional review by the selection criteria;

(e) Maintain reasonable procedures to detect recommendations that are not suitable. This may include, but is not limited to, confirmation of consumer suitability information, systematic customer surveys, interviews, confirmation letters and programs of internal monitoring. Nothing in this subsection (8)(e) prevents an insurer from complying with this subsection (8)(e) by applying sampling procedures, or by confirming suitability information after issuance or delivery of the annuity; and

(f) Annually provide a report to senior management, including to the senior manager responsible for audit functions, which details the review, with appropriate testing, reasonably designed to determine the effectiveness of the supervision system, the exceptions found, and corrective action taken or recommended, if any.

(8)(a) Nothing in this subsection restricts an insurer from contracting for performance of a function (including maintenance of procedures) required under RCW 48.23.015(4). An insurer is responsible for taking appropriate corrective action and may be subject to sanctions and penalties pursuant to RCW 48.23.015(6) regardless of whether the insurer contracts for performance of a function and regardless of the insurer's compliance with (b) of this subsection.

(b) An insurer's supervision system must include supervision of contractual performance under this subsection. This includes, but is not limited to, the following:

(i) Monitoring and, as appropriate, conducting audits to assure that the contracted function is properly performed; and

(ii) Annually obtaining a certification from a senior manager who has responsibility for the contracted function that the manager has a reasonable basis to represent, and does represent, that the function is properly performed.

(9) An insurance producer shall not dissuade, or attempt to dissuade, a consumer from:

(a) Truthfully responding to an insurer's request for confirmation of suitability information;

(b) Filing a complaint; or

(c) Cooperating with the investigation of a complaint.